



[Billing Code 6750-01-S]

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084- AB03]

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (“Appliance Labeling Rule”)

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Advance notice of proposed rulemaking and public meeting announcement.

SUMMARY: The Commission seeks comment on disclosures to help consumers, distributors, contractors, and installers easily determine whether a specific furnace, central air conditioner, or heat pump meets the applicable new Department of Energy efficiency standard for the regions where it will be installed. The Commission seeks comment on the content, location, and format of such disclosures. As part of this effort, the Commission staff will hold a public meeting with the Department of Energy to discuss possible disclosures.

DATES: Comments must be received by January 10, 2012. The public meeting will be held on December 16, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Regional Labeling for Heating and Cooling Equipment (16 CFR Part 305) (Project No. P114202)” on your comment, and file your comment online at <https://public.commentworks.com/ftc/regional-disclosuresanpr>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment

to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex H), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326-2889, Division of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission seeks comment on new labeling requirements and other disclosures for residential furnaces, central air conditioners, and heat pumps (*i.e.*, heating and cooling equipment) to help consumers and industry members install equipment with the efficiency rating appropriate for their location under new regional efficiency standards issued by the Department of Energy (DOE). These new standards impose minimum efficiency levels which vary by region for different types of equipment.

To facilitate the development of such disclosures, the Commission seeks comment on their appropriate content, location, and format. After considering comments, the Commission will publish specific proposed requirements for comment and then publish final disclosure requirements as amendments to the Commission's Appliance Labeling Rule (16 CFR Part 305).

II. Background

The Commission's Appliance Labeling Rule, issued pursuant to the Energy Policy and Conservation Act (EPCA),¹ requires energy labeling for major household appliances and other

¹42 U.S.C. 6291 *et seq.*

consumer products to help consumers compare competing models.² When first published in 1979,³ the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Since 1979, the Commission has expanded the Rule's coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, certain types of water heaters, and televisions.⁴ The Rule requires manufacturers to attach yellow EnergyGuide labels to all covered furnaces, central air conditioners, and heat pumps.⁵ The Rule also prohibits retailers from removing these labels or rendering them illegible.⁶ In addition, sellers, including retailers, must post label information on websites and in paper catalogs from which covered products can be ordered.⁷

The EnergyGuide labels for heating and cooling equipment contain two key disclosures: (1) the product's efficiency rating,⁸ and (2) a "range of comparability" showing the highest and

²More information about the Rule can be found at <http://www.ftc.gov/appliances>.

³44 FR 66466 (Nov. 19, 1979).

⁴See 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (Jul. 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); 59 FR 49556 (Sep. 28, 1994) (pool heaters); 71 FR 78057 (Dec. 26, 2006) (ceiling fans); and 76 FR 1038 (Jan. 6, 2011) (televisions).

⁵See 42 U.S.C. 6302(a)(1) and 16 CFR 305.4(a)(1).

⁶See 42 U.S.C. 6302(a)(2) and 16 CFR 305.4(a)(2).

⁷See 42 U.S.C. 6296(a) and 16 CFR 305.20.

⁸Efficiency ratings for these products include annual fuel utilization efficiency (AFUE) for furnaces, and seasonal energy efficiency ratio (SEER) and heating performance seasonal factor (HSPF) for central air conditioners and heat pumps.

lowest ratings for all similar models.⁹ The Rule also specifies the label's format. For example, the label must be yellow and feature the EnergyGuide headline in a specific format and type. Additionally, manufacturers cannot place any information on the label other than that specifically allowed by the Rule.

The Rule also requires manufacturers to provide distributors and installers with energy information about their furnaces, central air conditioners, and heat pumps in paper or electronic form (including internet-based access).¹⁰ In turn, retailers, including installers, must show this information to their customers and let them read the information before purchase.

III. DOE Regional Standards for Heating and Cooling Equipment

On June 27, 2011,¹¹ DOE published a direct final rule notice promulgating new efficiency standards for residential furnaces, central air conditioners, and heat pumps as authorized by the Energy Independence and Security Act of 2007 (EISA).¹² DOE's direct final rule became effective on October 25, 2011.¹³ Unlike existing DOE standards which impose uniform, national efficiency levels, the new standards for certain products vary by region.¹⁴ As

⁹16 CFR 305.13.

¹⁰16 CFR 305.14.

¹¹76 FR 37408.

¹²Pub. L. 110-140; 42 U.S.C. 6295(o)(6). EISA amended EPCA to authorize separate regional standards for these products.

¹³*See* 76 FR 67037 (Oct. 31, 2011). Although DOE's final standards became effective on October 25, 2011, DOE is not requiring compliance until later. Specifically, DOE will require nonweatherized gas furnaces to comply by May 1, 2013; and weatherized gas furnaces and central air conditioner and heat pump product classes to comply by January 1, 2015.

¹⁴42 U.S.C. 6295(o)(6)(B). The DOE standards apply to three regions: the North, Southeast, and Southwest. For furnaces, the standards are the same for the southeastern and

detailed in Tables 1 and 2, the DOE standards impose regional efficiency standards for split air conditioners, package air conditioners, and gas furnaces (non-weatherized and mobile home).

The standards for other covered heating and cooling equipment are national.

Table 1: DOE Regional Efficiency Standards for Furnaces

System Type	North	Southeast	Southwest
Non-weatherized	90% AFUE	80% AFUE	80% AFUE
Mobile home gas	90% AFUE	80% AFUE	80% AFUE
Non-weatherized	83% AFUE	83% AFUE	83% AFUE
Weatherized gas	81% AFUE	81% AFUE	81% AFUE
Mobile home oil-fired	75% AFUE	75% AFUE	75% AFUE
Weatherized oil-fired	78% AFUE	78% AFUE	78% AFUE
Electric	78% AFUE	78% AFUE	78% AFUE

Table 2: DOE Regional Efficiency Standards for Central Air Conditioners and Heat Pumps

--	--	--	--

southwestern regions. The Northern region encompasses Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. The Southeastern region encompasses Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and the District of Columbia. The Southwest includes Arizona, California, New Mexico, and Nevada. 76 FR 37422.

System Type	North	Southeast	Southwest
Split-system air	13 SEER ¹⁵	14 SEER	14 SEER /12.2 EER ¹⁶ <45,000 Btu/h
Split-system heat pumps	14 SEER/ 8.2 HSPF ¹⁷	14 SEER/ 8.2 HSPF	14 SEER/8.2 HSPF
Single package air conditioners	14 SEER	14 SEER	14 SEER/11.0 EER
Single-Package Heat Pumps	14 SEER/ 8.0 HSPF	14 SEER/ 8.0 HSPF	14 SEER/8.0 HSPF
Small-duct, high-velocity systems	13 SEER/ 7.7 HSPF	13 SEER/ 7.7 HSPF	13 SEER/ 7.7 HSPF
Space-constrained products -air conditioners	12 SEER	12 SEER	12 SEER
Space-constrained products - heat pumps	12 SEER/ 7.4 HSPF	12 SEER/ 7.4 HSPF	12 SEER/ 7.4 HSPF

To promote compliance with these new standards, DOE is developing an EISA-directed enforcement plan which will specify the responsibilities of various entities (*e.g.*, installers, distributors, and manufacturers) to meet the new standards and to make any required

¹⁵Seasonal Energy Efficiency Rating.

¹⁶Energy Efficiency Rating.

¹⁷Heating Seasonal Performance Factor.

disclosures.¹⁸ DOE must complete this plan within 15 months after issuance of the final regional standards. To augment DOE's enforcement efforts, EISA grants states the authority to enforce the regional standards in Federal court.¹⁹

IV. FTC Disclosures for Heating and Cooling Equipment

To help consumers and businesses determine whether a product conforms with the regional standards promulgated by DOE, EISA directs the FTC to develop new disclosures for furnaces, central air conditioners, and heat pumps. Specifically, the law requires the Commission to "determine the appropriate 1 or more methods for disclosing information so that consumers, distributors, contractors, and installers can easily determine whether a specific piece of equipment that is installed in a specific building is in conformance with the regional standard that applies to the building."²⁰ The statute also authorizes the Commission to modify the Energy Guide label or develop other disclosure "methods that make it easy for consumers and installers to use and understand at the point of installation."²¹ The Commission must complete this effort within 15 months of DOE's final publication of the regional standards. To begin this effort, the Commission requests comment on the content, location, and format for the new disclosure requirements.

The content of the new disclosures must help consumers and industry members avoid installing equipment in violation of regional standards. The Commission seeks suggestions for

¹⁸42 U.S.C. 6295(o)(6)(G).

¹⁹*Id.*

²⁰42 U.S.C. 6295(o)(6)(H).

²¹*Id.*

the best disclosure content to meet this goal. For example, such disclosures could simply explain that a particular product may or may not be installed in certain regions:²²

- o *[For split air conditioner systems rated lower than 14 SEER]:*

Federal law prohibits installation of this unit in Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, New Mexico, Nevada, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or the District of Columbia.
- o *[For split air conditioner systems smaller than 45,000 Btu/h and rated lower than 12.2 EER, split air conditioner systems larger than or equal to 45,000 Btu/h and rated lower than 11.7 EER, and single-package air conditioner systems rated lower than 11.0 EER]:*

Federal law prohibits installation of this unit in Arizona, California, New Mexico, or Nevada.
- o *[For non-weatherized gas furnaces (including mobile home gas furnaces) rated lower than 90% AFUE]:*

Federal law prohibits the installation of this unit in Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania Rhode Island,

²²Efficiency ratings for central air conditioner systems depend on the particular condenser and evaporator coil paired to form the system. Thousands of possible condenser and coil combinations exist. Given the impracticality of including all such combinations on a label, the current EnergyGuide label discloses a condenser's efficiency rating when paired with the coil with which it is most commonly sold. The current label appears on the condenser only.

South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, or Wyoming.

- o *[For all other covered products]:*

Federal law allows installation of this unit in any U.S. state.

These examples represent one possible approach for providing the content of the disclosures.

Other possibilities include providing more detailed explanations of the standards or using illustrations, such as a map of the U.S. to indicate where the law prohibits installation of certain equipment.²³ The Commission seeks comments on these options and other possible disclosures.

Please address whether the label should include additional information that may be relevant to regional standards compliance, such as the Energy Efficiency Rating (EER) for central air conditioners.²⁴ Commenters should also refer to the specific questions set forth in section V.

Comments should also address the location and format for the required disclosures. For instance, the EnergyGuide label could be revised to include information about whether a specific piece of equipment meets standards for installation in a specific region. Alternatively, the manufacturer could provide the required disclosures through other means such as product nameplates, product packaging, brochures, user manuals, websites, or online databases. Such alternative methods might provide more space than the EnergyGuide labels for the disclosure of

²³New ENERGY STAR logo specifications adopted by the Environmental Protection Agency use a U.S. map to communicate whether a product meets the energy efficiency levels for that program.
http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/furnaces/Furnaces_Final_V3_and_V4_Cover_Memo.pdf.

²⁴Currently, the EnergyGuide label for these products only discloses the Seasonal Energy Efficiency Rating (SEER). The SEER reflects a model's energy performance over a range of temperature conditions while EER measures energy performance at a single, high temperature.

detailed compliance information. The disclosure format could also involve a combination of these approaches. For example, the Energy Guide label could include a QR (Quick Response) scan code to provide mobile phone access to an online database containing detailed product information in addition to disclosures on the label or elsewhere. The EPA recently adopted such an approach for new fuel economy labels on automobiles.²⁵ In addressing these issues, commenters should also consider the specific questions in section V.

V. Issues and Questions for Comment

The Commission seeks general comments on potential disclosure methods to help consumers, distributors, contractors, and installers easily determine whether residential heating and cooling equipment meets applicable regional efficiency standards. The Commission invites interested persons to submit written comments on any issue of fact, law or policy that may bear upon the FTC's current labeling requirements. Please provide details to support your comments. We encourage commenters to consider the questions below when preparing comments.

(1) *Content*: What information is necessary to inform consumers and industry members whether equipment complies with DOE-mandated regional energy standards in a particular region? Should the disclosures use images (*e.g.*, a map of the U.S.) to illustrate the scope of the regional standards? What changes would be required to the EnergyGuide label (*e.g.*, EER disclosures) in addition to disclosures specifically related to regional standards?

(2) *Location and Format*: Should the required disclosures appear on the label affixed to the product, on packaging, through point of sale materials, on the internet, or through some other means? Should the disclosures appear in a combination of these formats in multiple locations?

²⁵http://yosemite.epa.gov/opa/admpress.nsf/names/hq_2011-5-25_fueleconomylabel.

If so, which ones? Should the FTC explore the use of QR (Quick Response) scan codes to allow installers and consumers to access detailed information about the equipment through mobile phones? If the disclosures appear on the product itself, should the Commission replace the EnergyGuide label with permanent disclosure on the product nameplate or a similar location?

(3) *Separate Disclosures*: Should the Commission develop separate disclosures for furnaces, central air conditioners, and heat pumps given differences in the way these products are rated on the EnergyGuide label and how they are installed? Should the Rule require separate disclosures for industry members and consumers? Should the Rule require different disclosures or instructions for various industry members such as distributors and installers?

(4) *Installer Requirements*: What changes, if any, should the Commission make to the content and format of disclosures installers must provide to their customers?

(5) *Database Information*: Are there existing databases the Commission could use to help industry members and consumers determine whether equipment complies with the regional energy standards, including the efficiency ratings of specific compressor and coil combinations for central air conditioners?

(6) *Benefits*: What benefits, if any, will the new disclosures provide to consumers? What evidence supports the asserted benefits? What benefits, if any, will the new disclosures provide to industry members? What is the magnitude of such benefits? What evidence supports the asserted benefits?

(7) *Costs*: What costs, if any, would the potential new disclosures impose on businesses, and in particular on small businesses such as installers? What would be the magnitude of such costs? What evidence supports the asserted costs?

(8) *Other Federal, State, or Local Requirements*: Would the new disclosures overlap or conflict with other federal, state, or local laws or regulations? If so, how?

VI. Request for Comment

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the proposals under consideration. Please include explanations for any answers provided, as well as supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue specific amendments.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 10, 2012. Write “Regional Labeling for Heating and Cooling Equipment, (16 CFR Part 305) (Project No. P114202)” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial

information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).²⁶ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://public.commentworks.com/ftc/regional-disclosuresanpr>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write "Regional Labeling for Heating and Cooling Equipment, (16 CFR Part 305) (Project No.114202)" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex H), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

²⁶In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 10, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

VII. Public Meeting Information

The Commission and DOE staff have scheduled a public meeting to give interested parties an opportunity to provide their views on potential FTC disclosures and the DOE enforcement plan related to new regional standards for furnaces, central air conditioners, and heat pumps. The public meeting will be held on December 16, 2011 at DOE. DOE will provide details regarding time, location, attendance and participation at the meeting.

By direction of the Commission.

Donald S. Clark
Secretary

Publication Date: 11/28/2011]

[FR Doc. 2011-30436 Filed 11/25/2011 at 8:45 am;